

Introduced by Senator MurrayFebruary 22, 2005

An act to amend Section 21080 of, and to add Chapter 4.3 (commencing with Section 21155) to Division 13 of, the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 948, as introduced, Murray. CEQA: environmental impact reports: short form.

The existing California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA provides an exemption for specified types of projects, including, among other things, ministerial projects proposed to be carried out or approved by public agencies, emergency repairs to public service facilities necessary to maintain service, projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace certain facilities damaged or destroyed as a result of a natural disaster, and certain actions necessary to prevent or mitigate an emergency.

This bill would require a lead agency to prepare a short form environmental impact report for a project subject to CEQA if the lead agency has determined that the project meets specified criteria, including that the project consists of a residential development combined with one or more qualified urban uses, as defined, is located within the boundaries of an incorporated city or within an unincorporated area designated in an approved local general plan for

residential development, and is consistent with specified land use requirements, as provided. The bill would require that a short form environmental impact report include specified information, and comply with specified procedural requirements of CEQA for an environmental impact report, except as provided. By imposing new duties on local agencies with respect to determining whether requirements for a short form environmental impact report apply to specific projects, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) There is an urgent need to remove regulatory barriers to the
4 provision of housing.

5 (b) Consideration of projects that include housing in
6 appropriate areas, such as areas within cities and counties that are
7 already designated for residential development should be
8 streamlined in areas to help reduce environmental impacts.

9 (c) California's environmental impact review procedures can
10 be balanced with the need to remove barriers to the development
11 of housing by providing a simpler process for conducting
12 environmental review.

13 SEC. 2. Section 21080 of the Public Resources Code is
14 amended to read:

15 21080. (a) Except as otherwise provided in this division, this
16 division shall apply to discretionary projects proposed to be
17 carried out or approved by public agencies, including, but not
18 limited to, the enactment and amendment of zoning ordinances,
19 the issuance of zoning variances, the issuance of conditional use

1 permits, and the approval of tentative subdivision maps unless
2 the project is exempt from this division.

3 (b) This division does not apply to any of the following
4 activities:

5 (1) Ministerial projects proposed to be carried out or approved
6 by public agencies.

7 (2) Emergency repairs to public service facilities necessary to
8 maintain service.

9 (3) Projects undertaken, carried out, or approved by a public
10 agency to maintain, repair, restore, demolish, or replace property
11 or facilities damaged or destroyed as a result of a disaster in a
12 disaster-stricken area in which a state of emergency has been
13 proclaimed by the Governor pursuant to Chapter 7 (commencing
14 with Section 8550) of Division 1 of Title 2 of the Government
15 Code.

16 (4) Specific actions necessary to prevent or mitigate an
17 emergency.

18 (5) Projects which a public agency rejects or disapproves.

19 (6) Actions undertaken by a public agency relating to any
20 thermal powerplant site or facility, including the expenditure,
21 obligation, or encumbrance of funds by a public agency for
22 planning, engineering, or design purposes, or for the conditional
23 sale or purchase of equipment, fuel, water (except groundwater),
24 steam, or power for a thermal powerplant, if the powerplant site
25 and related facility will be the subject of an environmental
26 impact report, negative declaration, or other document, prepared
27 pursuant to a regulatory program certified pursuant to Section
28 21080.5, which will be prepared by the State Energy Resources
29 Conservation and Development Commission, by the Public
30 Utilities Commission, or by the city or county in which the
31 powerplant and related facility would be located if the
32 environmental impact report, negative declaration, or document
33 includes the environmental impact, if any, of the action described
34 in this paragraph.

35 (7) Activities or approvals necessary to the bidding for,
36 hosting or staging of, and funding or carrying out of, an Olympic
37 games under the authority of the International Olympic
38 Committee, except for the construction of facilities necessary for
39 the Olympic games.

(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for capital projects necessary to maintain service within existing service areas, or (E) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.

(9) All classes of projects designated pursuant to Section 21084.

(10) A project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities.

(11) A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.

(12) Facility extensions not to exceed four miles in length which are required for the transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

(13) A project for the development of a regional transportation improvement program, the state transportation improvement program, or a congestion management program prepared pursuant to Section 65089 of the Government Code.

(14) Any project or portion thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state. Any emissions or discharges that would have a significant effect on the environment in this state are subject to this division.

(15) Projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5.

1 Any site-specific effect of the project which was not analyzed as
2 a significant effect on the environment in the plan or other
3 written documentation required by Section 21080.5 is subject to
4 this division.

5 (c) If a lead agency determines that a proposed project, not
6 otherwise exempt from this division, would not have a significant
7 effect on the environment, the lead agency shall adopt a negative
8 declaration to that effect. The negative declaration shall be
9 prepared for the proposed project in either of the following
10 circumstances:

11 (1) There is no substantial evidence, in light of the whole
12 record before the lead agency, that the project may have a
13 significant effect on the environment.

14 (2) An initial study identifies potentially significant effects on
15 the environment, but (A) revisions in the project plans or
16 proposals made by, or agreed to by, the applicant before the
17 proposed negative declaration and initial study are released for
18 public review would avoid the effects or mitigate the effects to a
19 point where clearly no significant effect on the environment
20 would occur, and (B) there is no substantial evidence, in light of
21 the whole record before the lead agency, that the project, as
22 revised, may have a significant effect on the environment.

23 (d) If there is substantial evidence, in light of the whole record
24 before the lead agency, that the project may have a significant
25 effect on the environment, an environmental impact report shall
26 be prepared. *A short form environmental impact report shall be*
27 *prepared if the project satisfies the criteria set forth in Section*
28 *21155.1.*

29 (e) (1) For the purposes of this section and this division,
30 substantial evidence includes fact, a reasonable assumption
31 predicated upon fact, or expert opinion supported by fact.

32 (2) Substantial evidence is not argument, speculation,
33 unsubstantiated opinion or narrative, evidence that is clearly
34 inaccurate or erroneous, or evidence of social or economic
35 impacts that do not contribute to, or are not caused by, physical
36 impacts on the environment.

37 (f) As a result of the public review process for a mitigated
38 negative declaration, including administrative decisions and
39 public hearings, the lead agency may conclude that certain
40 mitigation measures identified pursuant to paragraph (2) of

subdivision (c) are infeasible or otherwise undesirable. In those circumstances, the lead agency, prior to approving the project, may delete those mitigation measures and substitute for them other mitigation measures that the lead agency finds, after holding a public hearing on the matter, are equivalent or more effective in mitigating significant effects on the environment to a less than significant level and that do not cause any potentially significant effect on the environment. If those new mitigation measures are made conditions of project approval or are otherwise made part of the project approval, the deletion of the former measures and the substitution of the new mitigation measures shall not constitute an action or circumstance requiring ~~recirculation~~ recirculating of the mitigated negative declaration.

(g) Nothing in this section shall preclude a project applicant or any other person from challenging, in an administrative or judicial proceeding, the legality of a condition of project approval imposed by the lead agency. If, however, any condition of project approval set aside by either an administrative body or court was necessary to avoid or lessen the likelihood of the occurrence of a significant effect on the environment, the lead agency's approval of the negative declaration and project shall be invalid and a new environmental review process shall be conducted before the project can be ~~reapproved~~ *reproved*, unless the lead agency substitutes a new condition that the lead agency finds, after holding a public hearing on the matter, is equivalent to, or more effective in, lessening or avoiding significant effects on the environment and that does not cause any potentially significant effect on the environment.

SEC. 3. Chapter 4.3 (commencing with Section 21155) is added to Division 13 of the Public Resources Code, to read:

CHAPTER 4.3. SHORT FORM ENVIRONMENTAL IMPACT
REPORT

21155. It is the intent of the Legislature that this chapter be interpreted in a manner that fulfills the goals of protecting the environment while also streamlining the evaluation and approval of projects that help to provide housing in appropriate areas. It is the further intent of the Legislature that the courts should not interpret these sections in a manner that imposes substantive or

1 procedural requirements that impair the ability of local agencies
2 to streamline the evaluation of those projects.

3 21155.1. A lead agency shall prepare a short form
4 environmental impact report pursuant to this chapter if it has
5 determined pursuant to subdivision (d) of Section 21080 that the
6 project may have a significant effect on the environment, but that
7 the project meets all of the following criteria:

8 (a) Consists of a residential development, or a residential
9 development combined with one or more qualified urban uses, as
10 defined in Section 21072.

11 (b) Is located within the boundaries of an incorporated city or
12 within an unincorporated area designated in an approved local
13 general plan for residential development.

14 (c) Is consistent with both of the following:

15 (1) The land use designation for that area, as specified in the
16 approved local general plan, as that designation existed on the
17 date that the lead agency determines that the application for the
18 project is complete.

19 (2) The standards of population density and building intensity
20 in the land use element of the approved local general plan, as
21 those standards existed on the date that the lead agency
22 determines that the application for the project is complete.

23 21155.2. A short form environmental impact report prepared
24 pursuant to this chapter shall include all of the following:

25 (a) A statement briefly describing the reasons for determining
26 that any effects on the environment caused by the project are not
27 significant and, for this reason, have not been discussed in the
28 short form environmental impact report. This statement may
29 consist of a checklist analysis supported by brief explanations.

30 (b) A separate section setting forth all significant effects on the
31 environment of the proposed project, including mitigation
32 measures proposed to minimize the significant effects on the
33 environment. This section shall be limited to a discussion of
34 effects on the environment that are substantial, or potentially
35 substantial, and that could result in an adverse change in physical
36 conditions that exist within the project area as described in
37 Section 21065, and that are also project-specific effects as
38 defined in Section 21065.3.

39 21155.3. A lead agency preparing or approving a short form
40 environmental impact report shall comply with the procedural

1 requirements of this division for an environmental impact report,
2 including the requirement for public notice. However,
3 requirements for notice of a determination set forth in Sections
4 21080.4 and 21083.9 shall not apply to a short form
5 environmental impact report.

6 21155.4. (a) A short form environmental impact report may
7 be used for any project subject to Section 21083.3.

8 (b) For a project that meets the criteria set forth in Section
9 21155.1, a short form environmental impact report may be used
10 to conduct further environmental review after an initial
11 environmental impact report has been prepared, or if a further
12 environmental impact report is required, under any of the
13 following laws or regulations:

14 (1) The requirements for tiered environmental impact reports
15 set forth in Section 21094.

16 (2) The requirements for staged environmental impact reports
17 set forth in Section 15167 of Title 14 of the California Code of
18 Regulations.

19 (3) The requirements for program environmental impact
20 reports set forth in Section 15168 of Title 14 of the California
21 Code of Regulations.

22 (4) The provisions for master environmental impact reports set
23 forth in Chapter 4.5 (commencing with Section 21156).

24 SEC. 4. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 a local agency or school district has the authority to levy service
27 charges, fees, or assessments sufficient to pay for the program or
28 level of service mandated by this act, within the meaning of
29 Section 17556 of the Government Code.